

TREVOR A. FREEMAN

IBLA 94-680

Decided February 3, 1997

Appeal from a decision of the California State Office, Bureau of Land Management, declaring a mining claim abandoned and void for failure to pay rental fees or qualify for exemption. CA MC 250972.

Affirmed.

1. Mining Claims: Abandonment--Mining Claims: Rental or Claim Maintenance Fees: Generally

The responsibility for satisfying the requirements of the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1993, P.L. 102-381, 106 Stat. 1374, 1378-79 (1992), resided with the owners of the unpatented mining claim, mill site, or tunnel site, as Congress had mandated that, unless a claimant timely filed documents evidencing entitlement to a small miners exemption, failure to timely make the annual payment of the claim rental fee as required by the Act would conclusively constitute an abandonment of the unpatented mining claim, mill site, or tunnel site.

2. Evidence: Presumptions--Mining Claims: Rental or Claim Maintenance Fees: Generally

The presumption of regularity which supports the official acts of public officers in the discharge of their duties must, for reasons of public policy and under burden of proof analysis, be accorded priority over the presumption that documents properly mailed are duly delivered. Thus, when Government files do not indicate that a document was received, an appellant must show not merely that the document was properly transmitted, but that it was, in fact, actually received.

APPEARANCES: Trevor A. Freeman, Sun City, California, pro se.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Trevor A. Freeman has appealed from a decision of the California State Office, Bureau of Land Management (BLM), dated May 20, 1994, declaring the General No. 4 placer mining claim, CA MC 250972, abandoned and void for

failure to pay rental in the amount of \$100 per claim or submit a certification of exemption from payment of rental fees for the 1993 and 1994 assessment years.

The subject association placer mining claim, situated in T. 6 S., R. 5 W., San Bernardino Meridian, San Diego County, California, was located by the current claimants, including appellant, in January 1992. While a notice of annual assessment work was subsequently filed for the 1992 assessment year, the BLM records failed to indicate any further filing with respect to this claim prior to issuance of the May 20 decision.

In its decision, BLM recounted that, under the provisions of the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1993 (Act), P.L. 102-381, 106 Stat. 1374, 1378-79 (1992), all mining claimants were required to pay the \$100 per claim rental fees for both the 1993 and 1994 assessment years or file for and establish their qualifications for an exemption therefrom on or before August 31, 1993. Noting that its records indicated that the claimants had failed to either submit the rental fees or file for an exemption, the decision declared the General No. 4 placer mining claim abandoned and void.

On appeal, Freeman asserts that proper notices were timely mailed to BLM before the August 31, 1993, deadline. He contends that, while he cannot prove that the notices were received, BLM cannot prove they were not sent. Freeman also argues that, considering the time and money expended to improve this claim, it would be senseless if he and the other claimants did not file "a simple form that we have been filing for years."

[1] The relevant provisions of the Act, enacted by Congress on October 5, 1992, provides, in pertinent part, that:

[F]or each unpatented mining claim, mill or tunnel site on federally owned lands, in lieu of the assessment work requirements contained in the Mining Law of 1872 (30 U.S.C. 28-28e), and the filing requirements contained in section 314(a) and (c) of the Federal Land Policy and Management Act of 1976 (FLPMA) (43 U.S.C. 1744 (a) and (c)), each claimant shall, except as provided otherwise by this Act, pay a claim rental fee of \$100 to the Secretary of the Interior or his designee on or before August 31, 1993 in order for the claimant to hold such unpatented mining claim, mill or tunnel site for the assessment year ending at noon on September 1, 1993 * * *.
[Emphasis added.]

106 Stat. 1378. The Act contained an identical provision establishing rental fees for the assessment year ending at noon on September 1, 1994, requiring payment of the \$100 rental fee on or before August 31, 1993. 106 Stat. 1378-79.

The Act further provided, subject to various conditions, for an exemption from the payment of rental fees for claimants holding 10 or fewer

claims, the so-called small miner exemption. Id. Additionally, the Act directed "[t]hat failure to make the annual payment of the claim rental fee as required by this Act shall conclusively constitute an abandonment of the unpatented mining claim, mill or tunnel site by the claimant." 106 Stat. 1379.

On July 15, 1993, the Department promulgated regulations implementing the rental fee provisions of the Act, see 58 FR 38186, including sections governing rental fee exemption qualifications and filing requirements, later codified at 43 CFR 3833.1-6 and 3833.1-7 (1993). Those regulations stipulated that a small miner choosing not to pay the rental fee was required to file a separate statement on or before August 31, 1993, for each assessment year the exemption is claimed. Each separate statement was required to be notarized and to contain, inter alia, the signatures of all those claiming ownership in the claims to be exempted. 43 CFR 3833.1-7(d) (1993).

The documents submitted by Freeman in support of his appeal, which he declares are copies of the documents timely mailed to BLM, are captioned as notices of intent to qualify for small miner exemption and perform assessment work for both assessment years at issue. An examination of these documents, however, indicates that they are not notarized and are not signed by all claimants. We need not decide whether these deficiencies were subject to the provisions of 43 CFR 3833.4(b) (1993), since even ignoring them, the critical question remains whether or not these documents were timely received by BLM since its records indicate otherwise.

[2] All else appearing regular, administrative officials are presumed to have properly discharged their duties and not lost or misplaced legally significant documents submitted for filing. H.S. Rademacher, 58 IBLA 152, 88 I.D. 873 (1981). The Board accords great weight to this presumption of regularity, which is not overcome by an uncorroborated statement that the document was mailed to BLM. See Bernard S. Storper, 60 IBLA 67 (1981), aff'd, Civ. No. 82-0449 (D.D.C. Jan. 20, 1983). To overcome the presumption of regularity, an appellant must present evidence which establishes that it is "more probable than not" that the missing document was actually received and subsequently misplaced. See Nahama & Weagant Energy Co., 108 IBLA 209, 214 (1989).

In the instant situation, the only evidence offered is Freeman's declaration that he mailed the documents sufficiently in advance to allow for their timely receipt. Appellant has presented no evidence, however, that the documents were actually received by BLM. Applying the presumption of regularity to this case, we must presume, in the absence of evidence to the contrary (such as a return receipt), that the documents were not so received.

The Department has no authority to excuse lack of compliance with Congressionally-mandated requirements, to extend the time for compliance, or to afford any relief from the statutory consequences, and the Board may

not consider special facts or provide relief in view of mitigating circumstances. See, e.g., Maurine M. Carpenter, 136 IBLA 266 (1996); Chester Wittwer, 136 IBLA 96 (1996). Where a mining claimant failed to timely establish his or her qualifications for a small miner exemption from the rental fee requirement, the failure to pay the fee required by the Act resulted in a conclusive presumption of abandonment. See William B. Wray, 129 IBLA 173, 175 (1994); Lee H. and Goldie E. Rice, 128 IBLA 137, 141 (1994). We must conclude, therefore, that, inasmuch as the record reflects neither that payment was tendered nor certification submitted within the relevant time limits, BLM properly declared the subject mining claims abandoned and void.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

James L. Burski
Administrative Judge

I concur:

James L. Byrnes
Chief Administrative Judge